XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No.80of 2004

APPELLANTS

1. Lamlesh @ Lalit Prasad, \s/o Prahlad Satnami, aged about 30 yrs.
2. Prahlad Das Satnami, aged about 60 years, S/o Anthram Satnami.

Both are R/o Vill. Dewari, P.S. & Tah. Mungeli, Distt. Bilaspur (CG)

Vs

RESPONDENTS

1. The Oriental Insurance Company Limited, Branch Office Dayalband, Bilaspur, Distt. Bilaspur (C.G.)
2. Jagrit Das, S/o Devcharan Satnami, aged about 19 years, R/o Sangwa (Dewri), P.S. & Tah. Mungeli, Distt. Bilaspur (C.G.)

Present:

Mr. J.K. Shastri, Adv. with Miss Sushma Chandel, Adv. for the appellant.
Mr. Vinay Harit, Sr. Adv. with Mr. S.K. Mishra, Adv. for respondent No.1.
Mr. Utkarsh Verma, Adv. for respondent No.2

ORAL ORDER

(7.5.2007)

Per Dhirendra Mishra, J

The matter was heard finally with the consent of learned counsel for the parties in the first session, but on the prayer of learned Sr. Advocate for respondent No.1 that he shall be citing certain judgments the matter was again

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

heard after lunch. However, when the matter was called subsequently none appears on behalf of respondent No.1.

This is owners' appeal against the award dated 7.1.2004 passed in Claim Case No.7/2002 by the 2nd Additional Motor Accident Tribunals (F.T.C.), Mungeli, District Bilaspur whereby learned claims tribunal has awarded a sum of Rs.47,000/- in favour of respondent No.2 for the injuries sustained by him in a road accident caused by vehicle No.CG10-A-0107 which was driven rashly and negligently at the time of accident by appellant No.1 and owned by appellant No.2.

The argument urged by learned counsel for the appellants is that the tractor was validly insured by respondent No.1 for the relevant period, however, the tribunal has exonerated the insurance company firstly on the ground that the driver of vehicle was not possessing valid and effective driving license at the time of accident and secondly, that the vehicle, which was insured for agricultural purposes, was being used for transporting sand i.e. for non-agricultural purpose. Learned counsel further submits that the onus of proving the breach of policy condition squarely lies upon the insurance company.

Learned counsel for the appellant further submitted that from perusal of the documents available on record it is manifestly clear that the appellant No.1, who was driving tractor at the relevant time, was possessing learning license, which was valid for the period 16.2.2001 to 15.8.2001 and he was subsequently issued permanent driving license for the period commencing from 19.6.2001 to 18.6.2021, whereas, the accident took place on 22.4.2001. Thus, it is clear that at the time of incident the driver was possessing valid learning license.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Placing reliance on the law laid down by the Hon'ble Apex Court in the matter of **National Insurance Company Limited Vs Swaran Singh & others** reported in **(2004) 3 SCC 297** it is submitted that where the driver of the offending vehicle was possessing learners' license, the insurance company would be liable to satisfy the award. It was further argued that from the evidence available on record it is evident that the vehicle was being used for transporting the sand for the purpose of construction of granary for the owner of the tractor and therefore, the finding of the tribunal that the vehicle was being used for other than agricultural purposes is counter to the evidence available on record because constructing granary is a part of the agricultural operation and act of the owner in transporting the sand by his tractor cannot be construed to be used of vehicle for non-agricultural purposes and as such in violation of the policy condition.

On the other hand, learned Sr. Advocate for respondent No.1 submitted that the use of trolley for transporting sand is not an agricultural purpose and thus, there is apparent breach of policy condition.

I have heard learned counsel for the parties and perused the impugned award as also the evidence available on record.

It is not in dispute that the driver of the vehicle possessed learning license for the relevant period and subsequently he was issued permanent driving license by the R.T.O. concerned. In the matter of Swaran Singh (supra) this point has been dealt with and it has been held that simply because the driver was possessing learning license at the time of accident, the same will not absolve the

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

insurance company from the liability of satisfying the decree and therefore, the finding of the tribunal in this regard cannot be sustained.

Another ground on the basis of which the tribunal has exonerated the insurance company is that the vehicle was transporting the sand at the relevant time and as such it was being used for non-agricultural purpose is also not sustainable because from the evidence available on record particularly the evidence of driver Lamlesh who has stated that he was engaged by the owner Prahalad Das as the driver and he was transporting the sand for the purpose of construction of granary for the owner, it cannot be said that the tractor was used for non-agricultural purpose.

In the result, the appeal is partly allowed and the impugned award is modified to the extent that in addition to appellant No.1 & 2, respondent No.1-Insurance Company shall also be liable for satisfying the impugned award. Rest of the conditions of the impugned award shall remain as it is.

Sd/-
Dhirendra Mishra
Judge

Roshan/-

GRPRJ — FS/246— 2/2007 — 50,000.